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Defendant.

## Findings of Fact and Conclusions of Law Pursuant to Federal Rule of Criminal Procedure 23

Uploading IP Address: 2600:8801:2187:4b00:e002:8dc:b9f6:8d9e  
Date of Incident: August 24, 2017, at 16:31:33 UTC

3. This incident was documented under NCMEC CyberTip #23619360 and forwarded on September 5, 2017, to the Las Vegas Metropolitan Police Department for follow up investigation. Internet Crimes Against Children (ICAC) Task Force Officer (TFO) Scott Miller viewed the one uploaded image:

File Name: 1503580858295858544180.jpg  
SHA1: VLSSQOMHR3M5GOF6UD3YQTUXHBEJC3M  
Image Description: This image depicts a nude pre-pubescent female child, approximately 5 to 7 years of age, leaning back in a body of water. The child is smiling and exposing her bare breasts and vagina. The child has a diminutive stature and lacks fatty deposits, breast development, and pubic hair development.

4. On or about October 31, 2017, NCMEC received a report from Google, Inc. in reference to a possible transmission of child pornography. Google, Inc. reported the user uploaded one image of child sexual exploitation. Google, Inc. provided the following information regarding the user:

Email Address: Ricalivad66@gmail.com  
Name: Ric Alivad  
Phone: +17029360135 (Mobile)  
Uploading IP Address: 2600:8801:2187:4b00:18d9:12a2:c7e2:a5d2  
Date of Incident: October 19, 2017, at 01:48:01 UTC

5. This report was documented under NCMEC CyberTip #25229442 and forwarded on November 11, 2017 to the Las Vegas Metropolitan Police Department for follow up investigation. TFO Miller viewed the one uploaded image:

File Name: 15083741516582104624824.jpg  
SHA1: 7FYQTQZW434GMALRINFVEXMES4BJ2IMB  
Image Description: This image depicts a nude pre-pubescent female child, approximately 6 to 9 years of age, standing in a room. The child is covering her eyes with her hands and seen wearing bright lipstick. The child is exposing her bare vagina and has her bare breasts partially covered by her long brown hair. The child is smiling and exposing her bare breasts and vagina. Another nude female is seen

1 behind her, exposing her breasts and looking up at the child. The  
2 child has a diminutive stature and lacks fatty deposits, breast  
development, and pubic hair development.

- 3 6. On November 21, 2017, TFO Miller served a search warrant on Google, Inc.  
4 referencing email address: ricalivad66@gmail.com, for further evidence of child  
5 pornography and any subscriber information related to the email account.
- 6 7. On January 02, 2018, Google, Inc. responded to the search warrant. TFO Miller  
7 viewed the return from Google, Inc. and discovered an additional 600+ images of  
8 child sexual exploitation and child sexual abuse material, which had been uploaded  
9 and were all child pornographic in nature. There were also hundreds more images  
10 of child exploitative/age difficult images recovered. Images of Gilbert Davila, Jr.  
11 were also recovered, along with images of his Ford Flex vehicle that is registered to  
12 him. TFO Miller viewed the 600+ uploaded images and deemed all 600+ images to  
13 be child pornographic in nature.
- 14 a. I have viewed three of these images of child pornography. Each of these  
15 images depicts a minor under the age of eight years old engaged in sexually  
explicit conduct.
- 16 i. One image depicts a completely nude female child under the age of 12  
bound with yellow ropes. This is a known, identified victim. This  
17 photograph was produced outside the State of Nevada.
- 18 ii. Two images depict female toddlers nude from the waist down, both  
under the age of 3. One of the images depicts a phallic object inserted  
19 into the child's vagina. This child has a pacifier in her mouth. The  
other image depicts an adult finger inserted into the female child's  
vagina.
- 20 b. The final image I viewed is a screenshot of the partial search warrant return  
that shows additional images of fully nude female children under the age of  
21 12 years old. The focus of the images is the vaginas of these nude girls. The  
images, their setting, and the poses of the girls are sexually inviting and  
22 suggestive. The girls are displayed in unnatural poses and are completely  
nude. These images appear to convey sexual coyness or an apparent  
23 willingness to engage in sexual activity. These images were produced for no  
other purpose than to elicit a sexual response in the viewer.
- 24

- 1 8. These multiple Cybertips and the Google search warrant return show that Gilbert  
2 Davila, Jr. had been collecting child pornography for lengthy period of time.
- 3 9. On February 13, 2018, law enforcement executed a search warrant at Gilbert  
4 Davila, Jr.'s home. No occupants were located inside residence. Gilbert Davila, Jr.  
5 was contacted via a phone call to his listed phone number and informed that a  
6 search warrant was being served at his residence and that he needed to return home.  
7 Gilbert Davila, Jr. stated he would leave work and come to his residence, but never  
8 arrived. TFO Miller left a business card on his door, asking Gilbert Davila, Jr. to  
9 contact TFO Miller as soon as possible.
- 10 10. Later the same day, Gilbert Davila, Jr. called TFO Miller and apologized for not  
11 showing up at the residence, stating he was just scared and did not know what to  
12 do. Gilbert Davila, Jr. then agreed to be voluntarily interviewed and stated he  
13 would drive to TFO Miller's office.
- 14 11. Gilbert Davila, Jr. was interviewed at the ICAC Task Force Office. Gilbert Davila,  
15 Jr. was provided his *Miranda* Rights. He waived his rights to speak with TFO Miller.  
16 In relevant part, Gilbert Davila, Jr. admitted ricalivad66@gmail.com was his  
17 personal email address. When TFO Miller explained the nature of the search  
18 warrant, Gilbert Davila, Jr. confessed that he had a problem and that he had been  
19 looking at child pornography for approximately four to five years. Gilbert Davila,  
20 Jr. admitted that therapy classes piqued his curiosity in child pornography. Gilbert  
21 Davila, Jr. stated he then began searching for child pornography using search terms  
22 like "Lolita," would save some of it to his phone for later use and other times just  
23 try and masturbate to the child pornography. Gilbert Davila, Jr. stated that his wife  
24 caught him several times viewing child pornography and would tell him to stop or  
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1 she would call the police. Gilbert Davila, Jr. stated the last time he viewed child  
2 pornography was about one week ago. Gilbert Davila, Jr. stated he mostly looked at  
3 girls over eight years old, but admitted that he may have looked at younger children.

4 12. Gilbert Davila, Jr. stated he would view child pornography on his phone, which  
5 was identified as a Black LG cell phone, model # LS777, s/n: 711VTWP0734265.  
6 When Gilbert Davila, Jr. was asked where his phone was, he stated he was scared  
7 when he was called to come home when search warrant was being served on his  
8 residence, as he knew he had numerous images/videos of child pornography saved  
9 to his phone. Gilbert Davila, Jr. stated he then intentionally tried to perform a  
10 factory reset on his phone, in an attempt to delete all evidence, but that he did not  
11 believe it worked as he was driving and could not get an internet connection. Gilbert  
12 Davila, Jr. stated he then removed the back cover, phone battery, and the sim/SD  
13 card, and threw said items out of the vehicle window, in a further attempt to destroy  
14 any evidence of child pornography being on his cell phone. TFO Miller then asked  
15 Gilbert Davila, Jr. where the rest of his phone was and he stated his wife probably  
16 had it on her or in the vehicle they arrived in and that she was waiting for him in the  
17 lobby. TFO Miller then seized the phone from Gilbert Davila, Jr.'s wife to preserve  
18 any potential evidence of child pornography.

19 13. Later forensic review of the phone determined that Gilbert Davila, Jr. was  
20 successful in deleting all evidence by performing a factory reset on his phone on  
21 which he confessed to having child pornography stored.

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1. In the case of *United States v. Gilbert Davila, Jr.*, No. 2:18-cr-062-JCM-NJK, I find the defendant Gilbert Davila, Jr. **GUILTY** of Possession of Child Pornography as charged in the criminal indictment.
2. I find the United States has proven beyond a reasonable doubt that:
  - a. Gilbert Davila, Jr. knowingly possessed images, videos, and matters that he knew contained visual depictions of minors engaged in sexually explicit conduct and child pornography as defined in 18 U.S.C. § 2256(8);
  - b. Gilbert Davila, Jr. knew the visual depictions contained in the images, videos, and matters was of minors engaged in sexually explicit conduct and child pornography as defined in 18 U.S.C. § 2256(8);
  - c. Gilbert Davila, Jr. knew that production of such the visual depictions involved use of a minor in sexually explicit conduct; and
  - d. That the visual depictions had been mailed and transported in interstate or foreign commerce by any means, including by computer.

## Forfeiture

1. The government provided the proper and correct notice of forfeiture to Gilbert Davila, Jr., (Davila) in the indictment (ECF No. 11) regarding the Black LG cell phone, model # LS777, s/n: 711VTWP0734265 (property). Fed. R. Crim. P. 32.2(a); *United States v. Lo*, 839 F.3d 777, 791 (9th Cir. 2016), *cert. denied*, 136 S. Ct. 354 (2017).
2. “As soon as practical after a verdict or finding of guilty ... on any count in an indictment ... regarding which criminal forfeiture is sought,” this Court “must determine what property is subject to forfeiture under the applicable statute. If

1 the government seeks forfeiture of specific property, the court must determine  
2 whether the government has established the requisite nexus between the  
3 property and the offense.” Fed. R. Crim. P. 32.2(b)(1)(A) (ellipses added);  
4 *United States v. Newman*, 659 F.3d 1235, 1242 (9th Cir. 2011), *cert. denied*, 566  
5 U.S. 915 (2012), *abrogated on other grounds by Honeycutt v. United States*, 137 S.  
6 Ct. 1626, 1632 and 1635 (2017).

7 3. Preponderance of the evidence is the forfeiture standard. Preponderance of the  
8 evidence means that the government’s evidence, when considered and  
9 compared with that opposed to it, has more convincing force and produces in  
10 this Court’s mind belief that the property is subject to forfeiture under the  
11 applicable laws, or in other words, it is more likely than not that the property is  
12 forfeitable. *United States v. Mancuso*, 718 F.3d 780, 799 (9th Cir. 2013); *United*  
13 *States v. Phillips*, 704 F.3d 754, 770 n.14 (9th Cir. 2012); *United States v.*  
14 *Hernandez-Escarsega*, 886 F.2d 1560, 1577 (9th Cir.1989), *cert. denied*, 497 U.S.  
15 1003 (1990).

16 4. Requisite nexus is a connection between the property and the offense to which  
17 the defendant was convicted. Fed. R. Crim. P. 32.2(b)(1)(A); *Mancuso*, 718  
18 F.3d 780 at 799.

19 5. This Court’s “determination may be based on evidence already in the record  
20 ... and on any additional evidence or information submitted by the parties and  
21 accepted by the court as relevant and reliable.” Fed. R. Crim. P. 32.2(b)(1)(B)  
22 (ellipsis added). Since forfeiture is part of sentencing, relevant and reliable  
23 hearsay can be considered in determining the requisite nexus by  
24 preponderance of the evidence. Fed. R. Crim. P. 32.2(b)(1)(B); *Libretti v. United*  
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1           *States*, 516 U.S. 29, 41 (1995); U.S.S.G. 6A1.3(a); *United States v. Huckins*, 53  
2           F.3d 276, 279 (9th Cir. 1995); *United States v. Petty*, 982 F.2d 1365, 1369 (9th  
3           Cir.), *amended*, 992 F.2d 1015 (9th Cir. 1993).

4           6.    The government contends the above-named property is forfeitable by Davila  
5           under 18 U.S.C. § 2253(a)(1) and 2253(a)(3).

6           7.    The forfeiture statute states:

7                A person who is convicted of an offense under this chapter involving a  
8                visual depiction described in [18 U.S.C. § 2252A] shall forfeit to the  
              United States such person's interest in—

9                   (1) any visual depiction described in [18 U.S.C. §  
10                   2252A(a)(5)(B)], or any book, magazine, periodical, film,  
                  videotape, or other matter which contains any such visual  
                  depiction, which was produced, transported, mailed, shipped  
                  or received in violation of this chapter;

11               ... and

12               (3) any property, real or personal, used or intended to be used to  
13               commit or to promote the commission of such offense or any property  
              traceable to such property.

14               (b) Section 413 of the Controlled Substances Act (21 U.S.C. 853) with  
15               the exception of subsections (a) and (d), applies to the criminal  
              forfeiture of property pursuant to subsection (a).

16           8.    Property is forfeitable if it was “used” or “intended to be used” to commit, or to  
17           facilitate the commission of a criminal offense. The ordinary meaning of use is  
18           to convert to one’s service, to employ, to avail oneself of, and to carry out a  
19           purpose or action by means of. The context in which “used” appears in §  
20           2253(a)(3) suggests no different meaning. *United States v. Hull*, 606 F.3d 524,  
21           527-28 (8th Cir. 2010); *United States v. Littlefield*, 821 F.2d 1365, 1367 (9th Cir.  
22           1987) (ellipsis added) (“By specifying that property is subject to forfeiture if it  
23           was used ... to commit or facilitate a [crime], Congress plainly provided for

1 forfeiture of the property even where only a portion of it was used for the  
2 prohibited purposes.”).

3 9. Property is forfeitable as “facilitating” property if it makes the underlying  
4 criminal activity less difficult or more free from obstruction or hindrance. In other  
5 words, if it makes the underlying criminal activity easier to commit or harder to  
6 detect. To be forfeitable, the property need not be used exclusively for illegal  
7 activity; property that is used the vast majority of the time for legitimate purposes  
8 may nevertheless be forfeited if it facilitates a criminal offense. If a portion of the  
9 property is used to facilitate the offense, then all of the property is subject to  
10 forfeiture. Facilitation of even a single felony offense is sufficient to justify  
11 forfeiture. *United States v. Schifferli*, 895 F.2d 987, 990 (4th Cir. 1990).

12 10. The law provides that when, as here, Davila is convicted of violating certain  
13 criminal statutes, he is required to forfeit to the United States any visual  
14 depiction or any matter which contains any depiction which violates 18 U.S.C.  
15 § 2252A under 18 U.S.C. § 2253(a)(1) and any property traceable to, used, or  
16 intended to be used to commit or to promote the commission of the violations  
17 under 18 U.S.C. § 2253(a)(3).

18 11. Forfeit means for someone to be divested or deprived of the ownership of  
19 something as a part of the punishment allowed by the law for the commission  
20 of certain criminal offenses or in other words “divestiture of property without  
21 compensation” pursuant to the law. *United States v. Davis*, 706 F.3d 1081, 1085  
22 (9th Cir. 2013) (concurring opinion) (citation omitted).

23 12. The purpose of forfeiture in this case is to ensure that all visual depictions of  
24 child pornography and the property used to commit, to promote, or to  
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1 facilitate the commission of the crime are destroyed. 18 U.S.C. § 2253(a)(1)  
2 and 2253(a)(3).

3 13. In order for the government to establish the requisite nexus by a  
4 preponderance of the evidence that the property is forfeitable under 18 U.S.C.  
5 § 2253(a)(1) under the Forfeiture Allegation, the government must prove that it  
6 is more likely than not that the property is any visual depiction described in 18  
7 U.S.C. § 2252A, or any book, magazine, periodical, film, videotape, or other  
8 matter which contains any such visual depiction, which was produced,  
9 transported, mailed, shipped or received in violation of Possession of Child  
10 Pornography. 18 U.S.C. § 2253(a)(1).

11 14. In order for the government to establish the requisite nexus by a preponderance  
12 of the evidence that the property is forfeitable under 18 U.S.C. § 2253(a)(3)  
13 under the Forfeiture Allegation, the government must prove that it is more  
14 likely than not that the property is any property, real or personal, used or  
15 intended to be used to commit or to promote the commission of a violation of  
16 Possession of Child Pornography or any property traceable to such property. 18  
17 U.S.C. § 2253(a)(3).

18 15. This Court finds Gilbert Davila, Jr., was found guilty of Count One of a One-  
19 Count Criminal Indictment charging him with possession of child  
20 pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). Criminal Indictment,  
21 ECF No. 11; Minutes of Trial, ECF No. 47; Verdict, ECF No. 50.

22 16. This Court finds the government established by preponderance of the evidence  
23 the requisite nexus between the above-named property and the offense to  
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1 which Davila was convicted are forfeitable under both 18 U.S.C. § 2253(a)(1)  
2 and 2253(a)(3). Fed. R. Crim. P. 32.2(b)(1)(A).

3 17. This Court finds, pursuant to Fed. R. Crim. P. 32.2(b)(1) and (2), the United  
4 States of America has shown the requisite nexus between property set forth in  
5 the Forfeiture Allegation of the Criminal Indictment and the offense to which  
6 Gilbert Davila, Jr., was found guilty. Criminal Indictment, ECF No. 11;  
7 Minutes of Trial, ECF No. 47; Verdict, ECF No. 50.

8 18. This Court finds the following property is (1) any visual depiction described in  
9 18 U.S.C. § 2252A, or any book, magazine, periodical, film, videotape, or other  
10 matter which contains any such visual depiction, which was produced,  
11 transported, mailed, shipped or received in violation of 18 U.S.C. §  
12 2252A(a)(5)(B) and (2) any property, real or personal, used or intended to be  
13 used to commit or to promote the commission of 18 U.S.C. § 2252A(a)(5)(B) or  
14 any property traceable to such property, and is subject to forfeiture pursuant to  
15 18 U.S.C. § 2253(a)(1) and 2253(a)(3): Black LG cell phone, model # LS777,  
16 s/n: 711VTWP0734265.

17 19. This Court finds that the United States of America may amend this order at any  
18 time to add subsequently located property or substitute property to the  
19 forfeiture order pursuant to Fed. R. Crim. P. 32.2(b)(2)(C) and 32.2(e).

20 20. This Court finds the United States of America is now entitled to, and should,  
21 reduce the aforementioned property to the possession of the United States of  
22 America.

